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July 22, 2020

Hon. Andrew T. Baxter  
United States Magistrate Judge  
United States District Court  
Northern District of New York  
Federal Building and U.S. Courthouse  
P.O. Box 7396  
Syracuse, NY 13261-7396

Re: *Burinska v. SUNY, et al.*  
19-CV-564 (USDC) (NDNY)  
(MAD) (ATB)

Dear Judge Baxter:

Although the parties have agreed upon available dates for defendants' depositions on August 5, 6 and 13, 2020, defense counsel refuses to produce the defendants, in person, for their depositions, as requested in the deposition notices. As a result, plaintiff respectfully requests an order compelling their personal appearances on the following basis.

As an initial matter, in preparing for trial, it is important to examine the defendants in person to properly assess their demeanor and credibility. Moreover, pursuant to New York Governor Andrew Cuomo's phased reopening in response to the COVID-19 pandemic, the Capital Region, where the depositions are scheduled, entered Phase Four (4) of Reopening on July 1, 2020, and with New York City entering Phase Four on July 20, 2020, the entire State is currently in Phase Four Reopening.<sup>1</sup> As noted by the Governor's Office, "[t]he team of global public health experts advising New York State on its reopening strategy has thoroughly reviewed the data for the Capital Region and has cleared it to enter Phase 4." (*Id.*) In connection with New York's Phase Four Reopening, the Governor's Office has established New York Forward guidance for Phase Four Reopening by establishing protocols for the resumption of office-based work, such as the depositions contemplated herein.<sup>2</sup> Similarly, on July 9, 2020, as "New York continues its steady recovery from the COVID-19 pandemic" the NYS Unified Court System entered "Phase Four of Return to In-Person Operations" in the Third Judicial District, including the Capital

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1. This information is available on the Governor's website:

<https://www.governor.ny.gov/news/governor-cuomo-announces-capital-region-cleared-global-public-health-experts-enter-phase-4>.

2. Available on the Governor's website at:

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/offices-interim-guidance.pdf>

Region.<sup>3</sup> Accordingly, there is no legal restriction preventing the defendants' deposition appearances as noticed. However, defense counsel has asserted that her office has imposed certain restrictions, as well as other unspecified potential personal health concerns. It is respectfully submitted that such concerns are unfounded provided established guidance protocols are observed at the depositions, and that balanced against the plaintiff's substantial interest in properly preparing for trial, defendants should be compelled to appear for their depositions upon the condition that the proper protocols are followed.

Thank you for your consideration.

Very truly yours,

*Jeffrey P. Mans*

Jeffrey P. Mans

cc: Shannan C. Krasnokutski, AAG (*via* ECF)

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3. NYS Unified Court System Press Release (7/8/20) at:  
[https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR20\\_35.pdf](https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR20_35.pdf)